DOCUMENT RESUME

ED 378 129 SO 024 673

TITLE	Statement of Facts for 1993 City-Wide Mock Trial Competitions. Sandra W. v. Gregg M.
INSTITUTION	Georgetown Univ., Washington, DC. Law Center.; National Inst. for Citizen Education in the Law, Washington, DC.
PUB DATE	93
NOTE	39p.; For related items, see SO 024 656-674. Some pages may not reproduce clearly.
AVAILABLE FROM	Social Studies School Service, Dept. A3, P.O. Box 802, Culver City, CA 90232-0802.
PUB TYPE	Guides - Classroom Use - Instructional Materials (For Learner) (051) -- Guides - Classroom Use - Teaching Guides (For Teacher) (052)
EDRS PRICE	MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS	*Citizenship Education; *Civil Law; Court Litigation; Instructional Materials; *Law Related Education; Secondary Education; Social Studies
IDENTIFIERS	*Mock Trials; *Street Law

ABSTRACT

Prepared by the District of Columbia Street Law Project for its 22nd annual city-wide mock trial competition, this instructional handout provides the material for a mock civil trial in which Sandra Williams sues Gregg Mason for negligent transmission of the Human Immuno-Deficient Virus (HIV). On the night of May 15, 1990, Sandra and Gregg engaged in unprotected sexual intercourse. Earlier that day, Gregg had taken an HIV blood test that was later to reveal that he was HIV-positive. After Gregg informed Sandra of the results, she was herself tested and diagnosed as HIV-positive. Sandra claims that Gregg negligently transmitted the disease and sues him for medical costs, loss wages, and emotional suffering. The handout clarifies the laws and explains the legal precedents. As evidence, the handout provides a summary of estimated medical costs for individuals infected with HIV; the questionnaire Gregg completed in the health clinic on May 15; and witness statements from Sandra, Sandra's college roommate, her personal physician, Gregg, the bartender from the bar where Sandra and Gregg met, and an Acquired Immune Deficiency Syndrome (AIDS) specialist. Through participation in mock trials and analysis of the activity, students gain an insider's perspective on courtroom procedure and a basic understanding of the legal mechanism through which society resolves its disputes. Mock trials develop critical analysis, questioning and listening skills, and skills in preparing and organizing materials. (JD)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

D.C. STREET LAW

GEORGETOWN UNIVERSITY LAW CENTER
111 F STREET, NW, SUITE 330
WASHINGTON, D.C. 20001
(202) 662-9615

ED 378 129

Official 1993 Mock Trial Materials

for the

TWENTY-SECOND ANNUAL DISTRICT OF COLUMBIA PUBLIC SCHOOLS MOCK TRIAL PROGRAM

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

- This document has been reproduced as received from the person or organization originating it.
- Minor changes have been made to improve reproduction quality.
- Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

SANDRA W.

V.

GREGG M.

Statement of Facts for 1993 City-Wide Mock Trial Competitions

Prepared by

Stuart A. Grossman, Clinical Teaching Fellow
with Jami Silverman and Teri Thompson
of the D.C. Street Law Project

Georgetown University Law Center

in conjunction with

Program Director and Professor of Law, Richard L. Roe

and the

National Institute for Citizen Education in the Law

"PERMISSION TO REPRODUCE THIS MATERIAL IN OTHER THAN PAPER COPY HAS BEEN GRANTED BY
CAROLINE KULCZYCKI
TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

SO 024 673

BEST COPY AVAILABLE

Statement of Stipulated Facts

Sandra Williams is 23 years old and lives at 2122 Brookstone Road in West Hills, Michigan. Sandra graduated from State University in Chesterville, New Columbia in May 1990. Sandra met Gregg Mason on March 15, 1990 at Gregg's bar and restaurant, Mason's, during Sandra's senior year at State University. Sandra and Gregg began dating soon after they met. The night of May 15, 1990, Sandra and Gregg had sexual intercourse. Sandra used a contraceptive gel during the intercourse. Gregg did not use a condom. Sandra had been sexually active with one previous boyfriend.

Gregg Mason is 29 years old and lives at 34 Robin Lane in Chesterville, New Columbia. In January of 1990, Gregg began feeling tired often and he experienced many colds which lingered for long periods of time. On March 10, 1990, Gregg visited Dr. Alicia Long who did a complete physical examination of Gregg. On May 15, 1990, Gregg had an HIV blood test done at a health clinic in Chesterville. The test results showed that Gregg was HIV-positive. Gregg has not yet developed full-blown AIDS.

On June 27, 1990, Gregg telephoned Sandra and told her that he was HIV-positive. Soon after the phone call, Sandra had a blood test which was ordered by her personal physician, Dr. Jamie Braddock. The test results, received by Sandra on July 14, 1990, showed that Sandra was HIV-positive. Around March of 1992, Sandra was diagnosed as having AIDS. She was forced by illness to stop working on June 10, 1992. Sandra filed this lawsuit on July 2, 1992. No criminal charges of any kind have been brought against any party involved in this matter.

Claims & Defenses

Sandra is suing Gregg for negligent transmission of HIV. Negligent transmission of HIV is not yet a recognized cause of action in New Columbia, although it has been recognized in several other jurisdictions. Sandra claims that Gregg's negligent actions caused her to contract HIV which has progressed into AIDS. As a result of having AIDS, Sandra is unable to work and, therefore, is unable to support herself or to afford medical treatment. Additionally, Sandra will eventually die as a result of having AIDS and will suffer both emotionally and physically until her death.

Gregg claims that it is not his fault that Sandra contracted AIDS. He argues that the HIV virus that caused Sandra's illness must have come from some other source. Even if he is the source of her exposure, he should not be held responsible for her damages since he did not know that he was HIV-positive at the time he and Sandra had sexual intercourse. Furthermore, Sandra assumed the risk of exposure to HIV when she voluntarily engaged in sexual intercourse with Gregg.

Relief Requested

Sandra is asking the Court to make a finding of negligent transmission of HIV against Gregg Mason. Sandra is requesting the following damages awards: $44,300 for actual medical expenses (including costs for prescription medications, inpatient and outpatient hospital services, physician office visits and other services); $36,000 for future medical expenses (representing $3,000 per month of estimated expenses for 12 months of remaining estimated life expectancy); $20,000 for actual lost wages (representing $2,000 per month for 10 months of forced unemployment); $1,260,000 for future lost wages (representing an estimated $30,000 per year for an estimated 42 years of lost wage-earning capability); $500,000 for loss of enjoyment of life; and $500,000 for pain and suffering.

Gregg is asking the Court to find that there was no negligent transmission of HIV on his part and to deny any damages sought by Sandra. Even if there was a transmission of HIV on his part, Gregg is asking the Court to find that Sandra assumed the risk of exposure. In the event that the Court finds any liability on Gregg's part, Gregg is asking the Court to find that Sandra was also liable, and to reduce or deny her damages in accordance with the extent of her liability.

Witnesses for the Plaintiff

Sandra Williams, Plaintiff
Alex Robinson, Plaintiff's College Roommate
Dr. Jamie Braddock, Plaintiff's Personal Physician

Witnesses for the Defense

Gregg Mason, Defendant
Randy Edwards, Bartender at Mason's
Dr. Chris Potter, AIDS Specialist for the Defendant

APPLICABLE LAW

Related Statutes

New Columbia Code of Civil Procedure §3-201: Two-Year Limitation for Tort Claims

(a) An action for damages based upon any tort claim shall be filed within two years from the date it accrues.

(b) Any argument based upon the above statute of limitation shall be presented to the Court in the form of a brief, oral pretrial motion.

New Columbia Criminal Code §12-162: Criminal Transmission of HIV

(a) A person commits criminal transmission of HIV when he or she, knowing that he or she is infected with HIV:

(1) engages in intimate contact with another;

(2) transfers, donates, or provides his or her blood, tissue, semen, organs, or other potentially infectious body fluids for transfusion, transplantation, insemination, or other administration to another, or

(3) dispenses, delivers, exchanges, sells, or in any other way transfers to another any nonsterile intravenous or intramuscular drug paraphernalia.

(b) For purposes of this Section:

"HIV" means the human immunodeficiency virus or any other identified causative agent of acquired immunodeficiency syndrome.

"Intimate contact with another" means the exposure of the body of one person to a bodily fluid of another person in a manner that could result in the transmission of HIV.

"Intravenous or intramuscular drug paraphernalia" means any equipment, product, or material of any kind which is peculiar to and marketed for use in injecting a substance into the human body.

(c) Nothing in this Section shall be construed to require that an infection with HIV has occurred in order for a person to have committed criminal transmission of HIV.

(d) It shall be an affirmative defense that the person exposed knew that the infected person was infected with HIV, knew that the action could result in infection with HIV, and consented to the action with that knowledge.

(e) A person who commits criminal transmission of HIV commits a Class 2 felony.

New Columbia Case Law

Smith v. Reat, Inc., 47 New Col. App. 267 (1964).

> "A cause of action in tort ordinarily accrues when plaintiff's interest is invaded, i.e., where defendant's alleged breach of duty causes plaintiff to suffer pain, or injury or damage."

Abrams v. Abrams, 125 New Col. App. 395 (1988).

> "The statute of limitations begins to run when an injured person becomes possessed of sufficient information concerning his or her injury to put a reasonable person on inquiry to determine whether actionable conduct is involved."

Madison v. Griffith, 160 New Col. App. 401 (1990).

> "Where plaintiff's injury is a disease, a cause of action accrues only after plaintiff knows or has reason to know that he or she has a physical problem and also that someone is or may be responsible for it."

Moss v. Smart Prescription Pharmacy, Inc. 82 New Col. App. 117 (1972).

> "New Columbia is a comparative negligence jurisdiction. Awards in a tort action are based on the degree to which each party is at fault. Thus, once a defendant is found to be at fault, and the plaintiff is also found to be at fault, plaintiff's damages are diminished to the extent of the plaintiff's own fault. For example, if a plaintiff is found to be 25 percent at fault, plaintiff's damages are reduced by 25 percent. Note, however, if the plaintiff is 50 percent or more at fault, then the plaintiff is denied any recovery. New Columbia also recognizes the defense of assumption of risk in cases involving negligence claims."

Additional Case Law*

Susan R. v. James L., 700 P.2d 118 (1989).

Plaintiff, a registered nurse, brought suit against defendant, a doctor specializing in the treatment of patients with AIDS, charging him with negligently exposing her to the HIV virus. Testimony at trial revealed that plaintiff and defendant worked at the same hospital, were briefly involved in an intimate relationship, and engaged in a single act of sexual intercourse without use of a condom. Prior to the time he and plaintiff had sexual intercourse, defendant had experienced numerous physical indications that he might be HIV-positive, including persistent colds and flu, fatigue and unusual sores and rashes on his face and mucous membranes. Despite these warning signs, defendant did not have himself tested for HIV infection until shortly after his sexual encounter with plaintiff, and never warned plaintiff that he might be HIV-positive. In upholding a finding of negligence in the trial court, the Court of Appeals stated that "one who knows, or has reason to know, that he or she has a highly infectious disease can readily foresee the danger that the disease may be communicated to others with whom the infected person comes into contact. As a consequence, the infected person has a duty to take reasonable precautions -- whether by warning others or by avoiding contact with them -- to avoid transmitting the disease. Here, Dr. L., as a specialist in the treatment of AIDS, should have known that his symptoms indicated a need for extreme caution in situations involving sexual contact. Despite his knowledge, he ignored his responsibilities and breached his duty to take reasonable precautions."

L.B. v. R.H., 102 Cal. App. 3d 98 (1990).

Plaintiff sued defendant for negligent transmission of HIV. Both plaintiff and defendant were homosexual men in their late 20's. They had sexual relations with one another several times during the course of a month-long relationship. Plaintiff was aware prior to his first sexual contact with defendant, that defendant had had several previous homosexual partners and that defendant frequently used intravenous drugs. Despite this knowledge, plaintiff never requested that defendant wear a condom during sex, and never asked defendant whether or not he had used a condom with previous sexual partners.

---

*These are fictitious cases which may be used in the mock trial. It should be assumed that they are not from New Columbia and are not binding on this Court.

Prior to, and throughout, his relationship with plaintiff, defendant was not tested for HIV infection. At no time during this period did defendant display any unusual physical symptoms, visit a doctor, or discuss his sexual history or behavior with plaintiff. In dismissing the case, the Court stated that defendant had no duty to warn plaintiff about possible HIV infection or to refrain from sexual contact with plaintiff, since at the time of their relationship, defendant had no reason to know that he was infected with the HIV virus. The Court went on to explain that, even if a duty did exist, plaintiff had assumed the risk of possible HIV infection since he was knowledgeable about the consequences of unprotected sex, knew about the defendant's high-risk activities, and still voluntarily chose to engage in unprotected sex with defendant.

WITNESS STATEMENT
Sandra Williams
Plaintiff

My name is Sandra Williams and I am 23 years old. I live at 2122 Brookstone Road in West Hills, Michigan. I am currently unemployed as a result of having AIDS. I was a junior executive at a public relations firm earning $24,000 per year plus benefits until June 10, 1992 when I had to quit my job because of my failing health.

In May 1990, I graduated from State University in Chesterville, New Columbia, where I majored in communications. It was at State U. that I met Gregg Mason. Gregg owns and manages a bar and restaurant called Mason's where a lot of the college students hang out.

During my first 3 1/2 years of college I had seen Gregg at Mason's running the place, but I never spoke to him or anything. Then one day in March of 1990, Mason's was pretty empty. It was Spring Break so most of the students were away, but I had to stay because I had a research paper to do. I went to Mason's with two friends who also had to stay at school. As I said, Mason's was empty so Gregg was not running around as usual. He came over to our table and started talking with us. He was really nice and down to earth so we asked him to join us. The two of us started talking and we just hit it off. We had so much in common. We talked for a couple of hours and then I went home. Before I left, Gregg invited me to come back later in the week for dinner,

which I did about 3 or 4 days later. After that we started dating and saw each other a couple of days a week.

I thought Gregg was so special, so nice and considerate, and always a lot of fun to be around. He seemed honest and acted like a gentleman. In the beginning of the relationship, all we did was kiss. Later on in the relationship, he tried to push the physical relationship onto a more serious level, but I kept telling him that I did not want to have sex. Every time I told him I was serious about not having sex, he immediately stopped pushing me. As our relationship progressed, so did the physical part, but we never had sex. I really fell for Gregg, I thought we had something really special.

Before I knew it, it was time for graduation and I was packing all my stuff to go home. I was really upset because I was leaving all my friends and I did not know when I would see Gregg again. My last night before I went home I invited Gregg over to my place for dinner. It was so romantic with candles and slow music. After dinner we started kissing and then things became more serious. I knew I wanted to have sex with him. It was such a special night, and I thought we had a wonderful relationship and that he cared about me. I knew I cared about him.

Since I had turned down Gregg's sexual advances in the past, I thought he would not ask me to have sex with him unless I let him know I wanted to, so I told Gregg that it would be nice to sleep with him. Gregg said "No, we shouldn't." I thought he was just concerned that I felt pressured, so I told him that I wanted to sleep with him. Then Gregg said we should not have sex because he did not have a condom. I told him that I had a contraceptive gel to prevent pregnancy. I had a contraceptive gel with nonoxynol-9 from when I was sexually active with my old boyfriend, and I had recently checked the expiration date and confirmed that it was still effective. He then told me he would love to make love with me and we had sex. The next day I went home.

It was on Wednesday, June 27, 1990 that I received the phone call from Gregg when he told me he was HIV-positive. I was in shock. I could not think straight and I was very angry. I think I yelled at him and then hung up the phone. I did not know what to do. Finally I realized that I needed to get a blood test to see if I was HIV-positive. I went to my personal physician, Dr. Jamie Braddock, about a week later. Dr. Braddock did a full examination and ordered a blood test. Dr. Braddock said it would take 7 to 10 days for the results to come in. I called back a week later but the receptionist said the test results were not in yet. I called two days later, on July 14th, and spoke with Dr. Braddock who told me I was HIV-positive. I was devastated. How could this have happened to me? I did not do drugs, I did not

sleep around. It seemed like a cruel joke. I cried and screamed for what must have been hours.

Dr. Braddock talked with me for a long time and told me how I should expect the disease to progress. The doctor also gave me some medical literature to read. Dr. Braddock said statistics showed that I was unlikely to develop AIDS for another 7 to 10 years and with therapy it could take even longer than that. In fact only 50% of HIV infected people develop AIDS within 10 years.

After thinking about what Dr. Braddock had told me I decided not to mope around and feel sorry for myself. At that time, I thought about suing Gregg for giving me the disease but I decided not to because I did not want to deal with the stress, embarrassment and pain of a court trial. I wanted to make the most of my life and that meant not being caught up in a legal battle. I thought I could save enough money from my job to cover my medical costs as they arose and could get a little help from my parents. I knew I could not depend on my parents fully because they do not have much money. Another reason I did not want to sue Gregg immediately was because I was not yet ready to tell everyone I had the HIV virus. I was not sure if my friends and family would support me or reject me.

Over the next two years, my condition worsened quickly. I developed AIDS a lot faster than we thought I would. I had to quit my job on June 10, 1992, because I was not healthy enough to go to work every day. As a result, I have no way of supporting

myself. In addition, I have no health insurance because I never joined my company's insurance plan. I was covered by my parent's insurance plan until I turned 23 on June 26, 1992. When that coverage expired, I was left with no coverage at all.

Most of my friends and family will not spend time with me because they are scared they will somehow get AIDS. This is the most horrible disease. People actually have told me that I must have done something wrong in order to have contracted AIDS and that I am being punished for my past actions. Other people will not even touch me. Don't people know that you cannot get AIDS just from touching someone or sitting next to someone with AIDS? It is also terrible to see my own body deteriorate. Some days are better than others, but sometimes I cannot even get out of bed.

Since I developed AIDS as quickly as I have, I have had no time to save any money to pay for my medical expenses. So far I have spent $44,300. The cost of doctor visits, hospital stays, medicine, and full time care is unbelievable. I can hardly take care of myself now and my condition will only get worse in the future. I have decided to sue Gregg because it is his fault that this is happening to me. Since I cannot take care of myself, he should have to take responsibility for his actions.

I know I got AIDS from Gregg because I never did any intravenous drugs or had a blood transfusion. The only other person I ever had sex with was David Johnson, my high school boyfriend. David and I started dating our sophomore year in high

school, and we started having sex in our senior year. We were both virgins. We continued dating through our sophomore year in college. He went to Seton Hall University but we still dated seriously and remained sexually active. We broke up for a couple of months during the spring semester of our freshman year.

I know David did not have sex with anyone else because we had a very open and honest relationship and we talked about it. We talked about everything. We even talked about it after we got back together during our summer break following freshman year. We had sex a couple of times after that. We did not use a condom because I was on the Pill to prevent pregnancy.

In February of our sophomore year, David was in a car accident and was killed instantly. It took me a long time to work through his death, which is why I did not get into another serious relationship with anyone until Gregg.

I really thought Gregg was special and different. I never dreamed he had the HIV virus. I am so angry that he did not tell me before we had sex. The whole time we were dating he never told me there was a possibility he was HIV-positive. He should have told me he had gone for a blood test. I would not have had sex with him if he had let me know. He should have had some idea that he could have been HIV-positive just because of what is going on in our society today and due to the fact that he was sexually active with a number of women in the past. I'm only 23 years old and I'm going to die. There is so much that I want to do and now I am never going to get a chance. It is all Gregg's fault.

WITNESS STATEMENT
Alex Robinson
Plaintiff's College Roommate

My name is Alex Robinson and I am 23 years old. My address is 65 Birchwood Street, Apartment 3G in Chicago, Illinois. I graduated from State University in 1990 and now work as an office manager in a manufacturing company. I was Sandra's roommate for the last two years of college, and she is still my best friend. We lived in the same dorm freshman year at State U. and became fast friends. She is friendly, smart, funny and really cares about people. She is nice to everybody.

Sandra was a good student, she worked very hard and wanted to do well in school. She also liked to have fun and we often went to parties and dance places. We always had a great time because Sandra has a great sense of humor and everyone seems to like her. Since she is so attractive, she always received a lot of attention from men. Sandra would talk to them and dance with them, but she never led them on and always let them know she just wanted to be friends. She had a serious boyfriend from high school, David Johnson, and wanted to be faithful to him. She went on a few dates but never became seriously involved with anyone until Gregg Mason.

Sandra was very much in love with David. They had a great relationship. It seemed as if they were meant to be together. They had broken up for a few months during freshman year because Sandra thought David was cheating on her with other girls at his college. That summer they talked it out and they both realized

that they were just going through those changes that everyone goes through when they start college. They decided to get back together. They both worked hard on making their relationship strong and, according to Sandra, their relationship was better than ever. She even said that she believed that David had been faithful to her the whole time, even though I was not so sure.

It hit Sandra very hard when David was killed, and it took her a long time to get over it. In fact she did not go on a date for about a year and a half. That is why I was so surprised when she started dating Gregg so seriously. I was happy to see her interested in someone again and Gregg seemed nice and treated her well. Sandra was always talking about how special Gregg was and how much she liked him.

The day before we were leaving to go home after graduation, Sandra told me that she thought that she and Gregg were going to make love that night. I wanted to make sure she was aware of all the consequences, both emotionally and physically, of her actions so I asked her if she had protection and if she was really ready to take this step. She said yes to both questions. I do not think we talked about AIDS specifically but I know that she was aware of the disease and how it was transmitted. If I knew then what I know now about Gregg, I would have told her not to have sex with him. Maybe I should have asked Sandra if she and Gregg had talked about AIDS or made sure that they used a condom, but she never said anything to me and I did not think about it. I do not think about the disease all the time. You cannot obsess

about it. Besides, if Gregg knew there was a chance that he was HIV-positive, he should have told her.

It was about two months after we graduated that I noticed a change in Sandra. She sounded depressed on the phone, not the cheerful person I knew her to be. I asked her if anything was wrong but she said she did not want to talk about it. I did not want to push her so I let it drop. Sandra did not seem to get any better the next few times I spoke with her, so I began putting a lot of pressure on her to talk to me about it. I knew she was not close to her parents and that she did not have any brothers or sisters to talk to. That's when she told me she was HIV-positive.

I immediately knew she had gotten it from Gregg. It was the only possible explanation. I asked her if Gregg had given it to her. She said she thought so. I asked if she had confronted him about it and she said she had not spoken with him since he told her he was HIV-positive. I told her she should sue him and make him pay for what he had done. Sandra said she could not handle the embarrassment of everyone knowing, of facing the ordeal of a court battle, and that she just wanted to get on with her life and make the most of it. She then made me swear I would not tell anyone about it.

I cannot believe Gregg did not tell Sandra that he might be HIV-positive. I am glad she finally decided to sue him. He should have told her there was the possibility that he was HIV-positive or, at least, he should not have had sex with her. I am so upset by this. Sandra is my best friend and I pray a cure is found soon.

WITNESS STATEMENT
Dr. Jamie Braddock
Plaintiff's Personal Physician

My name is Dr. Jamie Braddock and I am Sandra Williams' personal physician. I went to college at Duke University, where I was a pre-med major. I attended medical school at the University of Pennsylvania and did a Family Practice residency at Boston City Hospital. After my residency, I started my own practice and have been practicing general family medicine in West Hills, Michigan for 12 years. I am being paid $100 per hour for my advice and testimony in this trial.

I have been Sandra's doctor since she was 14 years old. Sandra came to my office on July 5, 1990 and told me that she was concerned about the possibility that she might have been exposed to the HIV virus. She explained that she had recently had sex with a man who had just informed her that he was HIV-positive. Sandra said that, although she was worried about AIDS, she did not really think that she could have caught the virus from this man, since they only had sex once and had used a contraceptive gel with nonoxynol-9. Apparently, they had not used a condom.

I performed a thorough physical examination and ordered a blood test for the HIV virus. The test came back positive. It was very hard for me to tell Sandra, especially since I had known and treated her for many years. I also was not used to delivering this type of devastating news. I am not an AIDS specialist. At the time that Sandra's results came back, I had only treated one AIDS patient. My experience with this patient

was brief since he suffered from a severe form of AIDS with numerous complications and died quickly.

Although I do not specialize in the treatment of AIDS, I have kept up with the medical literature and have taken three continuing medical education courses on the diagnosis, progression and treatment of the disease. I have also attended several conferences on AIDS-related subjects and have conferred with colleagues in the field. I do, therefore, feel comfortable continuing to treat Sandra. I know what Sandra can expect to experience in the future and how the disease will most likely progress.

The HIV virus can be identified through blood testing as early as six weeks after infection, but identification of the antibody to the virus may take as long as six months. The HIV test looks for the antibodies our immune system produces in response to HIV, not the HIV virus itself. Although progression from HIV infection to full-blown AIDS rarely occurs within the first two years, it is possible. After the onset of full-blown AIDS, the average survival period is 7 to 24 months. However, therapy can prolong this length of time. Since Sandra has not shown signs of accelerated physical deterioration, I believe she can live at least 24 months from the initial onset of AIDS which, for her, occurred in March of 1992. Twenty-four months is a lot of time for researchers to develop new drugs and therapies which may help Sandra.

Although I cannot predict exactly what will happen to Sandra as her disease progresses, it is clear that her future will be marked by pain and suffering. Infections previously believed to be incapable of affecting healthy humans often cause pneumonia in AIDS patients. Other infections attack and damage the central nervous system, the lungs and the brain. Many AIDS patients develop Kaposi's sarcoma, a rare form of skin cancer, which develops on the skin and mucous membranes (e.g. lips, tongue). Many female patients with AIDS develop abnormalities of the cervix, or even cervical cancer. A spectrum of flu-like illnesses will often occur, and may be accompanied by fevers, sweats, lethargy, anorexia, nausea, headaches, diarrhea, rashes and sore throats.

Besides these physical developments, there are additional consequences which Sandra may face. The persisting social stigma and fear associated with AIDS often leads to emotional abandonment by friends, families and coworkers who do not understand the disease or how it is transmitted. Sandra is already experiencing the loss of financial security which occurs when working becomes impossible due to prolonged illness. She is also facing huge financial burdens. The medical bills are mounting and will only get worse. To date, Sandra's medical expenses total $44,300. Some drugs are available, but they are very expensive. Any new or experimental drugs will also be expensive. Sandra can expect numerous and prolonged hospital stays, and may need a personal nurse or even admission into a

full time care facility. Utilizing the figures in the National Center for Research on HIV's 1992 Annual Report Summary, I have computed Sandra's future medical expenses. They total $36,000, representing $3,000 per month of estimated expenses for 12 months of remaining estimated life expectancy.

We must also remember that AIDS, at this point in history, is incurable. In the end, Sandra will die from this disease. Unfortunately, she cannot even console herself with the possibility of a quick and painless death. Most AIDS patients suffer deaths which can only be described as painful and tragic.

I would say that Gregg Mason is certainly the most likely source of Sandra's AIDS infection. He was HIV-positive when they had sex, and one sexual encounter with a person who is HIV-positive is enough to transmit the disease. Although Sandra used a contraceptive gel with nonoxynol-9, the effectiveness of such a spermicide as an AIDS preventative is very unclear. In fact, some studies show that nonoxynol-9 has membrane disrupting properties which often cause irritation and which may, as a result, cause the spermicide to act as a pathway for HIV transmission. Additionally, the risk of male-to-female transmission is much higher than the risk of female-to-male transmission.

It is very important for women to realize how great the risks are. In 1988 AIDS was the 8th leading cause of death in women between the ages of 25 and 44. It is estimated that it will increase to the 5th leading cause of death by the early to mid-1990's.

22

WITNESS STATEMENT
Gregg Mason
Defendant

My name is Gregg Mason and I am 29 years old. I live at 34 Robin Lane in Chesterville, New Columbia where State University is located. I have owned and run Mason's for the last 5 years. I bought the place with money from a trust fund that was left to me by my parents. I also own two other restaurants in Chesterville and all three have been pretty successful business ventures. It is a pretty stressful job keeping all three places running smoothly but I enjoy it. The job involves taking care of the finances of all three places, providing advertising, keeping supplies full, and being at each place during the week to check up on things.

I came to the State University area because I wanted to get out of the city and go to a place where the quality of life was better. I located my restaurants in a college town because it is fun being around the college crowds and there was a strong possibility of business success because there was not too much competition in Chesterville.

I met Sandra Williams during Spring Break in her senior year at State University. It was March 15, 1990. Mason's was pretty dead because all the students were gone on break. Sandra had come in with two of her friends. I think she had a paper to work on or something. As I said, Mason's was almost empty so I started talking to them. Sandra and I hit it off pretty well. She was very smart and funny and we must have talked for a couple

of hours. I enjoyed being with her so I invited her back to Mason's for dinner later that week. She came back a few days later and after that we started dating casually.

I wanted to take the relationship really slow, both emotionally and physically. In the beginning all we did was kiss. Later in the relationship we began getting a little more serious but we never had sex. I may have asked her once or twice, but she always said no and I did not push her. I did not want the relationship to get too serious or for Sandra to become too attached to me since she was graduating and going home soon. I thought that after Sandra graduated and went home, we would write a couple letters to one another and then she would find another boyfriend at home.

In January 1990, I began feeling tired a lot of the time and I kept getting colds which took a long time to go away. I thought I was just working and pushing myself too hard so I tried to slow down. That worked for a while but the colds and the fatigue would not go away.

Finally, a month or two later I went to the doctor because my friend and employee Randy Edwards kept nagging me. The date was March 10th I think. Sandra and I began dating about a week later. I thought the doctor would just tell me that I was under a lot of stress, to start eating more vegetables and take better care of myself. I visited Dr. Alicia Long, who did a physical examination and told me pretty much what I had expected to hear. The doctor said the stress I was experiencing in my job was

probably the cause of my tiredness and that it made me more vulnerable to catching colds. Dr. Long suggested that I take a vacation if possible and to try to relax.

Towards the end of the examination, Dr. Long suggested that if I did not feel better soon that I should visit the local health clinic for a blood test on the off chance that I might possibly be HIV-positive. The doctor said there was really no need to have it done immediately unless I was really worried about it. Dr. Long indicated that if I continued to feel ill, or my symptoms became more severe, then I should get the blood test done since it was better to be safe. The doctor also said that you could never be too careful. Since I had never used intravenous drugs nor engaged in any homosexual activity I did not think it was necessary to go to the clinic immediately, especially since the doctor did not think it was necessary.

I never said anything to Sandra about my visit to the doctor because it did not seem important since Dr. Long did not think that I had the HIV virus. Plus, Sandra never seemed concerned about whether it was possible that I had the virus. She never asked me about it or anything like that.

My symptoms continued for about two months so I went to the health clinic to get the blood test done on May 15, 1990. As I said, I did not really think the test would be positive, but I figured it was better to be safe than sorry as Dr. Long had said. That night was Sandra's last night in town and she invited me over for dinner. It was very romantic. She had candles and soft

music playing in the background. I thought we would have a nice dinner, spend a couple of hours together, and then say goodbye, but Sandra had other plans. After dinner was over, we started fooling around a little, just kissing and stuff. However, Sandra started getting a lot more serious and aggressive. She then said she wanted to have sex. I told her "No." I did not want to have sex, but she kept telling me how much she wanted to have sex with me. I told her we could not have sex because I did not bring any condoms with me. She said she did not care because she had a contraceptive gel in her bathroom. She was really putting a lot of pressure on me. I figured that if the contraceptive gel was enough to satisfy her and she really wanted to have sex, it was okay with me. I just did not want her to feel pressured into having sex. The blood test crossed my mind but I thought there was no chance I would be HIV-positive or that she would get the disease, especially since she was going to use a contraceptive gel. I had heard a news report that most contraceptive gels contained a chemical called nonoxynol-9 which helped to inactivate the HIV virus. So, we had sex.

The health clinic had told me to call back in two weeks for the test results because that is how long it took to process the blood. I called two weeks later but the clinic worker could not find my file. She assured me they would find it quickly. I had been scheduled to leave for vacation the next day and since I was sure the test would be negative, I decided to go on my trip. I told the clinic worker I would call when I returned, which I did

two weeks later. That is when they told me I was HIV-positive. I could not believe it. I knew the results had to be wrong so I told them I wanted another test. I went in the next day and they put a rush job on the testing process. A week later my results came in. I was HIV-positive. I freaked out. I was so upset and angry. This could not be happening to me. I became very depressed. It was then that I thought of Sandra and wondered if I had given it to her. I knew I had to call and let her know, but it was not until about a week later that I got the nerve to call her. When I told her I had just found out that I had the HIV virus she said nothing. I was not sure she had heard me, so I repeated it. She started yelling and cursing at me and then she hung up. I did not try to call her again because I figured she did not want to talk to me. I did not hear from her again until I got notice that she was suing me.

The doctor is not sure how I got the disease. It could have been the result of a blood transfusion I received during knee surgery when I was 21 years old, or I could have gotten it from one of the women I have had sex with in the past. I just don't know. I am very sorry that Sandra is going to die and I truly understand all the feelings and anger she is experiencing right now. I know because I feel the same way every day. I am facing the same problems, the same sickness, the same rejection from family and friends that she is facing. Even though I have not developed AIDS yet, it is only a matter of time before I do. This is a shock for me too, but I do not think it is my fault. I

had no way of knowing and no reason to believe that I was HIV-positive when we had sex. She never asked me if I had the disease, or if there was even a chance that I was HIV-positive, or to get a blood test before we had sex. In fact, it was her idea to have sex. Besides, we only had sex that one time. Neither Dr. Long nor the health clinic told me not to have sex. Plus, how do I know she got it from me? I truly sympathize and empathize with her situation but it is not my fault.

WITNESS STATEMENT
Randy Edwards
Bartender at Mason's

My name is Randy Edwards and I am 27 years old. I live at 346 Washington Road, Apartment 27 in Chesterville, New Columbia. I have worked at Mason's for about two and a half years as a bartender. Gregg Mason hired me and we have been friends ever since. He is a great boss and friend and he is very responsible. He organizes everything for Mason's and his other two businesses. He has to keep the supplies full, arrange for bands to play, and handle all the finances. He always handles any problem that arises calmly and efficiently. He is also a very caring person. He always has time to listen to someone's problems and is very understanding if one of the employees needs time off. Anyone who works for him will tell you that he is the best boss they have ever worked for.

I have seen how Gregg interacts with people, especially customers in Mason's. He's always polite and treats them with respect. A lot of women who come into Mason's flirt with Gregg and let them know that they are interested in him but he rarely dates any of them. Gregg is not the kind of guy who tries to score with every woman he sees, even though he is never lacking for female companionship. He will talk with women in Mason's but lets them know that he is not interested in anything else. In fact, although I knew Gregg dated a lot, he rarely talked about the women he dated. While all the other guys in the bar would brag about their sexual encounters, Gregg never did. He always

talked respectfully about any woman he dated and said he never tried to push the sexual aspect of the relationship too fast.

It was during the winter of 1990 that I remember Gregg beginning to complain of being tired a lot of the time and seeming to catch cold after cold after cold. In the beginning I did not think anything of it since I knew that Gregg was working very hard and putting in a lot of hours at Mason's and his other businesses. It was also a very cold winter so I figured it was the weather that was making him sick.

It was about a month later that I started nagging Gregg to see a doctor. He was still working very hard, too hard, and he seemed to have a constant cold and to be tired all the time. I figured the doctor could give him some good medicine and would tell him to rest. I was hoping that since a doctor gave the advice, Gregg would listen. Gregg came back from the doctor and said that the doctor told him not work so hard and to try not to be so stressed. Gregg also mentioned something about getting a blood test done at the local clinic if he did not feel any better, even though the doctor really did not think it was necessary.

It was about this time that Gregg and Sandra Williams started dating. Sandra seemed really nice. Gregg and I talked about her. He said he liked her but that he did not want the relationship to get too serious since she was graduating soon. As usual, Gregg did not talk about their physical relationship other than to say that they were taking it very slow and he was happy with that.

It was a few weeks later that Gregg said he was going to get the blood test. The next day was the day Sandra left to go home and Gregg came into Mason's looking pretty sad. I asked if he had a good time the night before, and he said yes. I was surprised because he then continued to tell me what happened between them, which, as I said, was unusual for him. He said that she was very aggressive last night and was very serious about making love with him. Gregg then said that he was glad she was aggressive because he wanted to have sex with her too. After that, Gregg went into his office and started to work.

It was not until Sandra filed this lawsuit against Gregg that I found out he was HIV-positive. He had been depressed for months and when I finally sat him down and asked him what was wrong, it was like a dam breaking. This whole story came pouring out. It was like he just needed to get it off his chest. He started blaming himself saying that it was his fault that Sandra got AIDS. He was very upset and getting out of control. I finally calmed him down and we began to talk rationally about the situation.

We concluded that it is not Gregg's fault. Dr. Long did not tell Gregg to go get the blood test, the doctor did not even strongly recommend it, it was just suggested. The doctor did not tell Gregg not to have sex with anyone, so how was Gregg to know? In fact, Sandra could have gotten the disease other ways.

WITNESS STATEMENT
Dr. Chris Potter
AIDS Specialist for the Defendant

My name is Dr. Chris Potter. I am currently an Assistant Professor of Epidemiology at the University of North Carolina at Chapel Hill's School of Public Health. I went to college at Northwestern University, and then went to medical school at Illinois State. I did my residency at Illinois General Hospital. I also earned a PhD in Public Health with a concentration in Epidemiology from the University of North Carolina at Chapel Hill.

Epidemiology is the statistical study of health problems, including how diseases are spread and how many people in a particular location or risk group are affected by a given disease. Since receiving my PhD two years ago, I have concentrated on the epidemiology of AIDS. I have not had a clinical practice in medicine since my years at Illinois General, but my epidemiology studies and research on AIDS are quite extensive. I have testified about the epidemiology of AIDS at 20 trials in the last two years. At 15 of those trials, I testified on behalf of the defendant. I am being paid my regular rate of $250 per hour for research and testimony at this trial.

I met with Gregg Mason and his attorneys a few days ago, and they told me the whole story about what occurred between Gregg and Sandra Williams. They also told me the details of Gregg's visit to Dr. Alicia Long. I have never met with Sandra Williams, but I have gathered all the information I need to know.

It is my opinion that, since Gregg was not in any of the known risk groups, did not engage in any high-risk behaviors such as homosexual sex or intravenous drug use, and did not display any symptoms other than prolonged colds and flu at the time he was dating Sandra, his decision to have sex with her was perfectly in line with the behaviors of most heterosexual men in this country. I agree with Dr. Long's conclusion that Gregg was a candidate for HIV blood testing if his symptoms persisted. And, like Dr. Long, I would not have sent Gregg for immediate testing after his first office visit. It is plainly impractical for a doctor to insist that every patient who catches a cold in the middle of winter go for a blood test to determine if they are HIV-positive. Gregg did eventually go for a blood test when his symptoms persisted, just as Dr. Long recommended. Even at that stage, however, there was no strong reason for Gregg to assume, or even to suspect, that he was HIV-positive.

In the epidemiological study of AIDS there are generally three factors that are balanced when determining whether there is a high statistical probability that an individual is HIV-positive and, thus, should be tested. The first factor is the individual's history of AIDS-related high risk behaviors. These include male-to-male sex, injected drug use, hemophilia, or multiple sex partners. The second factor relates to events in the individual's medical history which indicate possible HIV infection. An individual with a history of anal warts, genital ulcers, or genital herpes, for example, has a statistically higher chance of being HIV-positive than someone who has never had any of these diseases. Receiving a blood transfusion prior

to 1985 can be considered a significant medical history factor. Since 1985, however, the blood supply has been considered safe by most experts. Due to improved HIV screening procedures, there is only the smallest statistical possibility of becoming HIV infected through a blood transfusion after 1985. The third factor includes findings on physical examination. There are certain physical findings which are present more often in HIV-positive patients. These include oral yeast infections, swollen lymph glands and a severe facial acne-like rash. It is up to the individual doctor to balance these three factors to decide if he or she should recommend that the patient get an HIV blood test. As I said, most doctors today do not advise all their patients to be tested for HIV.

In Gregg's case, the probabilities did not add up to indicate the need for an immediate HIV blood test after his first visit. As a matter of fact, until the results of his test actually came back from the lab, neither Gregg nor his doctor had any reason to assume that Gregg was HIV-positive. Other than having had sex with a few women in the past, Gregg did not engage in any of the high risk AIDS behaviors. His medical history was clean, and his physical exam did not uncover any of the conditions I mentioned. At the time he had sex with Sandra, there was simply no reason for Gregg to believe that he was HIV-positive or for him to alter his behavior. The increasing number of individuals with AIDS in the United States is something to be concerned with, but let's keep it in perspective. Roughly, only one in 1000 males in the U.S. is HIV-positive. That means that 999 out of every 1000 are <u>not</u> infected.

In addition to the fact that Gregg had no reason to assume that he was HIV-positive when he and Sandra had sex, there is another reason why I believe Gregg should not be held responsible for Sandra's condition. The rapidity of Sandra's progression from testing positive for HIV to developing full-blown AIDS indicates that Gregg is not the most probable source of Sandra's HIV infection. Statistically, it is very unlikely for Sandra to have gone from being HIV-positive to having full-blown AIDS in two years or less. Generally, only 2% of HIV-positive individuals have the disease progress to AIDS in less than two years. 25-35% will develop AIDS within seven years and 50% will develop AIDS within ten years. As is evident from these numbers, there is a very small chance that Sandra got the disease from Gregg. There is a higher statistical probability that Sandra had the disease before she had sex with Gregg.

If it is true that Sandra went from being HIV-positive to having AIDS so quickly, it seems to me that her claims for long-term medical costs and other future damages are unrealistically high. Statistics show that the average survival from the onset of full-blown AIDS is 7 to 24 months. If Sandra's condition has deteriorated as rapidly as she claims, it follows that her probability of survival is on the shorter end of that 7 to 24 month spectrum. She should not, therefore, be allowed to claim damages for a full 24 months.

There is yet another fact in this case which reduces the statistical probability that Gregg is responsible for Sandra's illness. Apparently Sandra used a contraceptive gel when she and Gregg had sex. The contraceptive gel she used contains a

chemical called nonoxynol-9. Although the findings are inconclusive, some studies have indicated that contraceptive gels with nonoxynol-9 may inactivate the HIV virus and thus reduce the probability of the disease's transmission from one individual to another.

NATIONAL CENTER FOR RESEARCH ON HIV
Middleton, New Columbia

Summary of 1992 Annual Report on Estimated Medical Costs and Life Expectancy for Individuals Infected with HIV

(Issued January 29, 1993)

Medical Costs

- Generally, an individual who is infected with HIV, but who has not yet developed AIDS, can expect to spend between $400 and $500 per month on medical expenses in 1993. Most of these expenses relate to the purchase of prescription drugs.

- Generally, an individual who has developed AIDS can expect to spend between $2,500 and $3,000 per month on medical expenses in 1993. Approximately 75 percent of this amount relates to inpatient hospital care, while the remaining 25 percent relates to prescription drugs and other services.

- It is estimated that these costs will increase by 20 percent in 1994 and again increase by 20 percent in 1995.

Life Expectancy

- Generally, once an individual infected with HIV has developed AIDS, the life expectancy of that individual is 7 to 24 months from the onset of AIDS. It is possible, however, for therapy and other factors to slightly extend this range.

Chesterville Health Clinic

All information on this form is for statistical purposes only. Neither your name nor any other identifying information will be released to any person, group or organization.

TODAY'S DATE: 5/15/90

1) Name Gregg Mason *2) Date of Birth* 8/16/63

3) How many partners have you had sexual intercourse with in the past 10 years?

____ *0*
____ *1*
____ *2-4*
____ *4-7*
X *More than 8*

4) During sexual intercourse, how often did you use a condom?

____ *Always*
X *Often*
____ *Occasionally*
____ *Rarely*
____ *Never*

5) Have you ever engaged in homosexual sexual intercourse?

____ *Yes*
X *No -- (if you check "no" go to question #8)*

6) If your answer to question #5 was "yes," how many times did you engage in homosexual sexual intercourse?

____ *Once*
____ *2-3 times*
____ *4-7 times*
____ *More than 8 times*

7) *If your answer to question #5 was "yes," how often did you use a condom?*

____ *Always*
____ *Often*
____ *Occasionally*
____ *Rarely*
____ *Never*

8) *Have you ever used intravenous drugs?*

____ *Yes*
X *No (if you check "no," go to question #10).*

9) *How often did you use intravenous drugs?*

____ *Once*
____ *2-4 times*
____ *5-7 times*
____ *more than 8 times*

10) *Have you ever had a blood transfusion?*

X *Yes*
____ *No (if "no" go to question #14)*

11) *How old were you when you had the blood transfusion?*

21 *years of age*

12) *Why have you decided to be tested for the HIV virus?*

____ *You know that you have been exposed to the HIV virus.*
____ *You strongly believe you may have been exposed to the HIV virus.*
____ *You have engaged in a significant amount of high-risk behavior (e.g. unprotected sex, intravenous drug use) and are concerned that you may have been exposed to the HIV virus.*
____ *You have had multiple sex partners and are concerned that you may have been exposed to the HIV virus.*
____ *You are experiencing symptoms or illnesses that lead you to believe you may have been exposed to the HIV virus.*
X *You have no reason to believe you have the HIV virus, but want to confirm that you are free of HIV infection.*
____ *Other (please explain).*

_____

_____